

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

LUPERCAL LLC,

Plaintiff

v.

CITIBANK, N.A.,

Defendant

Case No. 6:19-cv-00201-ADA

JURY TRIAL DEMANDED

LEAD CASE

LUPERCAL LLC,

Plaintiff

v.

PLAINS CAPITAL BANK,

Defendant

Case No. 6:19-cv-00202-ADA

JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AGAINST PLAINS CAPITAL BANK**

Plaintiff Lupercal LLC (“Lupercal” or “Plaintiff”) files this First Amended Complaint for patent infringement against Defendant Plains Capital Bank (“Plains Capital” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq.*

PARTIES

2. Lupercal is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, Defendant, Plains Capital, is a Texas company having a principal place of business in this judicial district at 201 W 5th St Ste 100, Austin, TX 78701.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendants have committed acts of infringement and have regular and established places of business in this judicial district.

COUNT I
(Infringement of U.S. Patent No. 9,386,094)

7. Lupercal incorporates paragraphs 1 through 6 as though fully set forth herein.

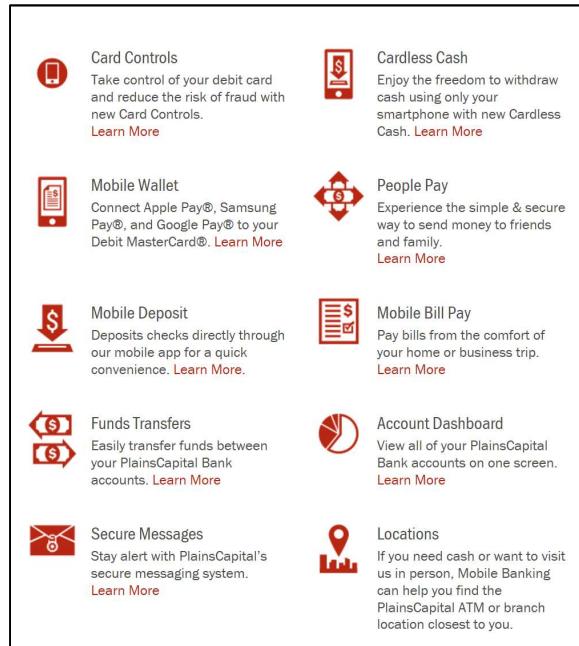
8. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,386,094 (the "094 Patent"), entitled SYSTEM AND METHOD FOR MEDIA SUBMISSION, which issued on July 5, 2016. A copy of the '094 Patent is attached as Exhibit A.

9. The '094 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

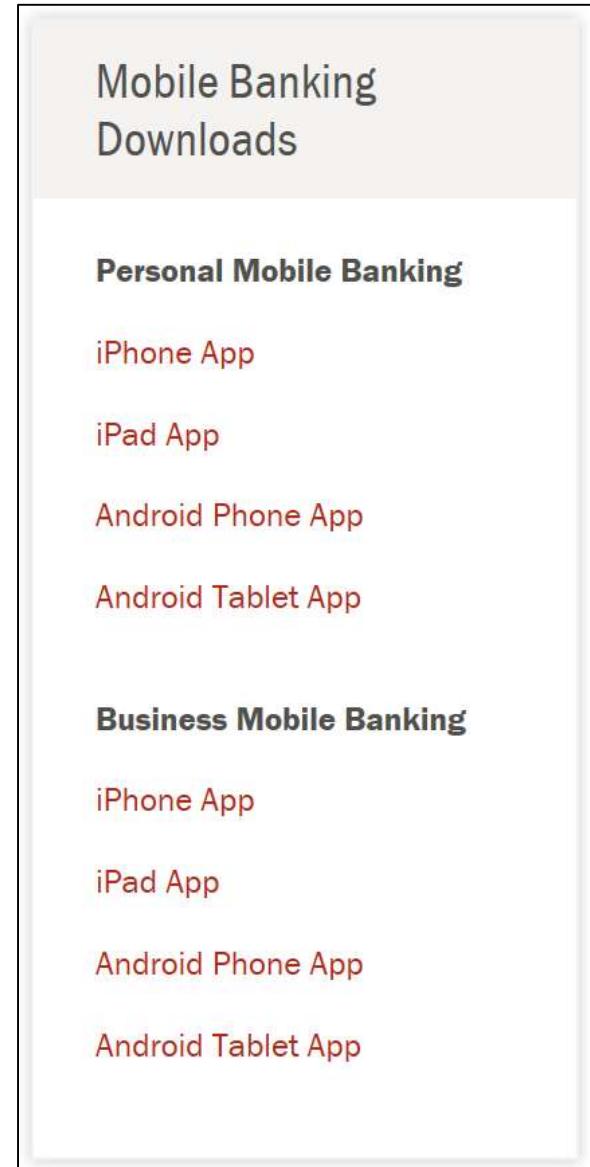
10. Defendant provides the Plains Capital Mobile Banking App for use with Apple iOS devices and Android devices, which is available for download from Apple's iTunes App Store and Google Play Apps:



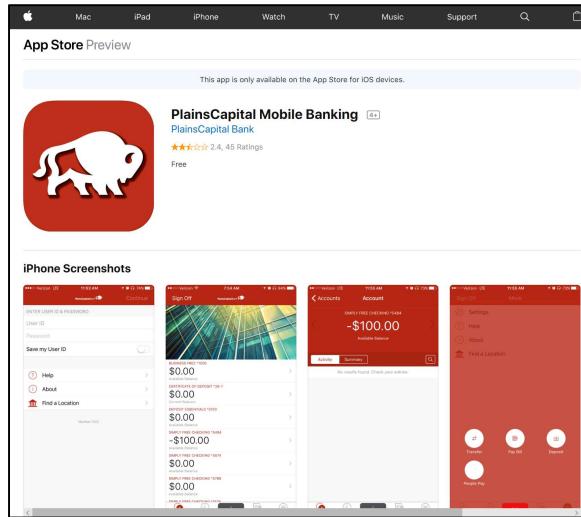
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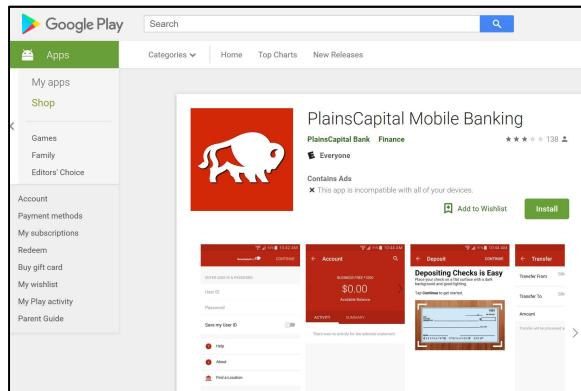
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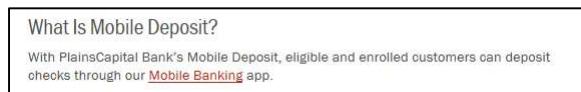
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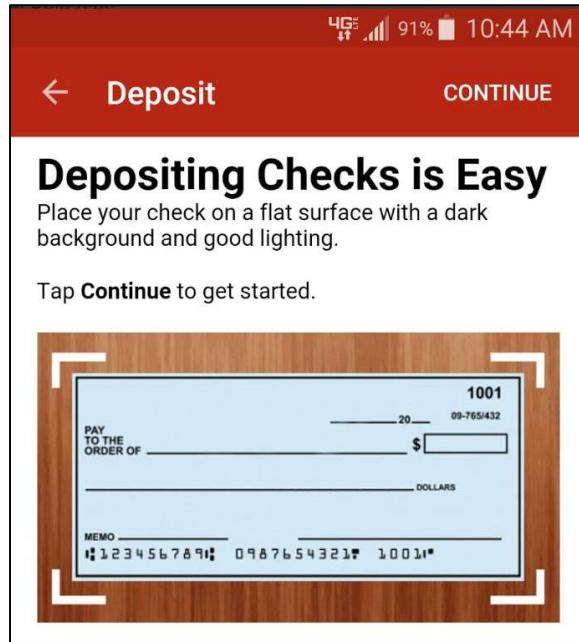
<https://itunes.apple.com/us/app/plainscapital-mobile-banking/id1108061964?mt=8>



https://play.google.com/store/apps/details?id=com.mfoundry.mb.android.mb_338



<https://www.plainscapital.com/mobile-deposit/>



https://play.google.com/store/apps/details?id=com.mfoundry.mb.android.mb_338



<https://www.plainscapital.com/mobile-deposit/>

11. Defendant controls the operation and use of the Plains Capital Mobile Banking App and encourages its customers to use the Plains Capital Mobile Banking App to deposit checks to the customer's accounts with Defendant. The Defendant's Plains Capital Mobile Banking App is the Accused Instrumentality through which Defendant and its customers infringe the '094 Patent.

12. At least by developing, distributing, operating, promoting, and encouraging the use of the Plains Capital Mobile Banking App, Defendant encourages its customers

to use the Plains Capital Mobile Banking App to practice the claimed methods, which Defendant controls the use of and derives a direct benefit and profit from.

13. Upon information and belief, Defendant has infringed and continues to infringe one or more claims, including Claim 42, of the '094 Patent by developing, distributing, operating, promoting, and encouraging the use of the Plains Capital Mobile Banking App in the United States without authority. Defendant has infringed and continues to infringe the '094 Patent either directly or through the acts of inducement in violation of 35 U.S.C. § 271.

14. Defendant has been on notice of the '094 Patent at least as early as February 25, 2019 when it received a notice letter from Defendant, which included a claim chart comparing the '094 Patent claims to the Plains Capital Mobile Banking App.

15. Claim 42 recites:

42. A computer implemented method performed by an image submission tool on a user device, comprising:
causing the image submission tool to generate a visual representation of one or more images, the visual representation enabling a user to determine whether the one or more images should be replaced with one or more replacement images;
causing the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images;

causing the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a device separate from the user device in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party;

causing the image submission tool to enable a user to submit the one or more pre-processed images; and

causing the image submission tool to transmit the one or more pre-processed images.

16. The Plains Capital Mobile Banking App enables account holders to deposit checks electronically by taking a photo of the front and back of the check. After selecting an account to deposit the check to, the user enters the amount of the check.

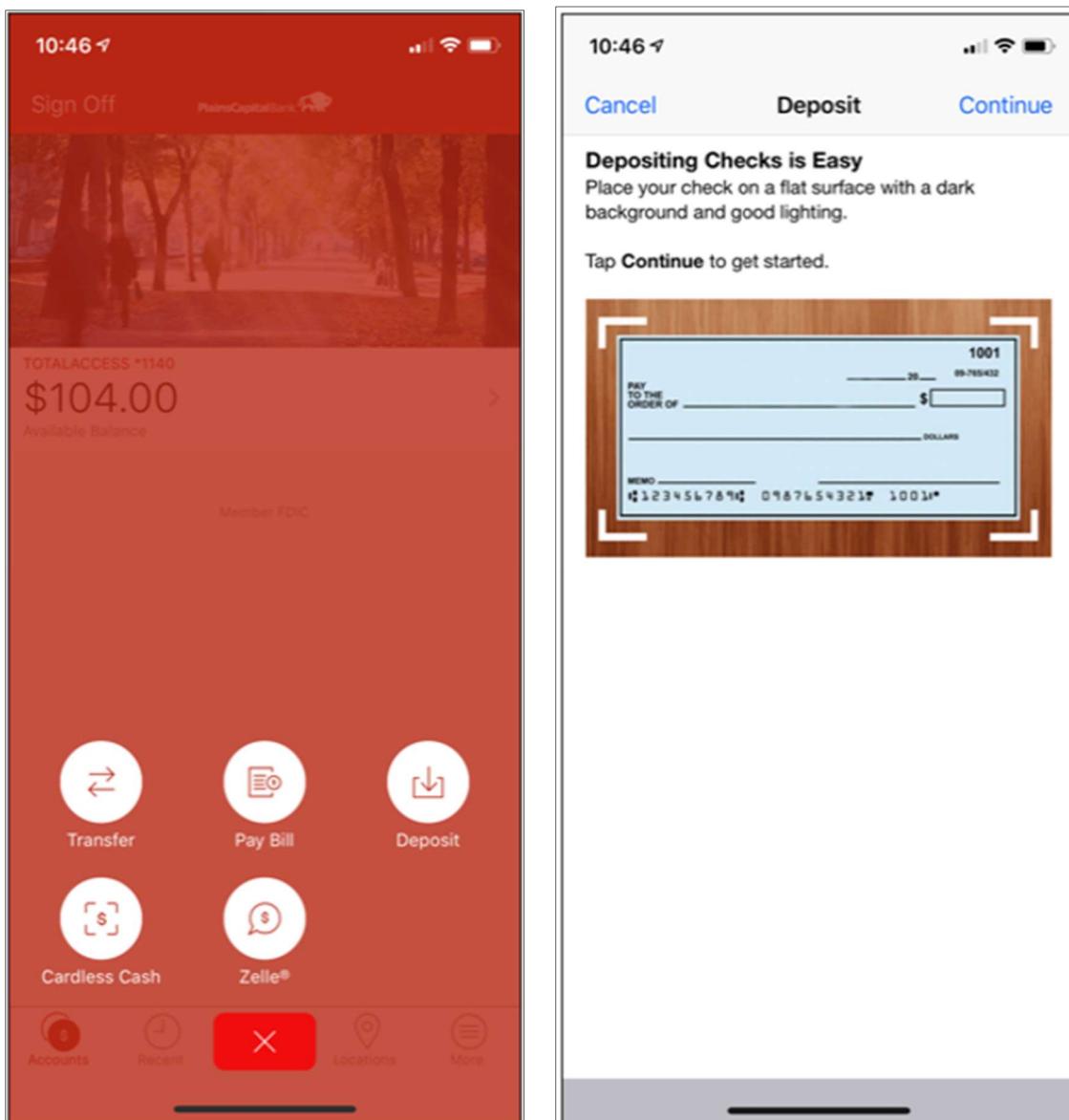
17. The photo of the front and back is manually taken by the user—as a result, the images produced may be blurry or otherwise undesirable, and the application enables the user to retake a given photo (front or back). A visual representation of the photos is displayed on the screen.

18. After selecting an account to deposit the check to, the user enters the amount of the check.

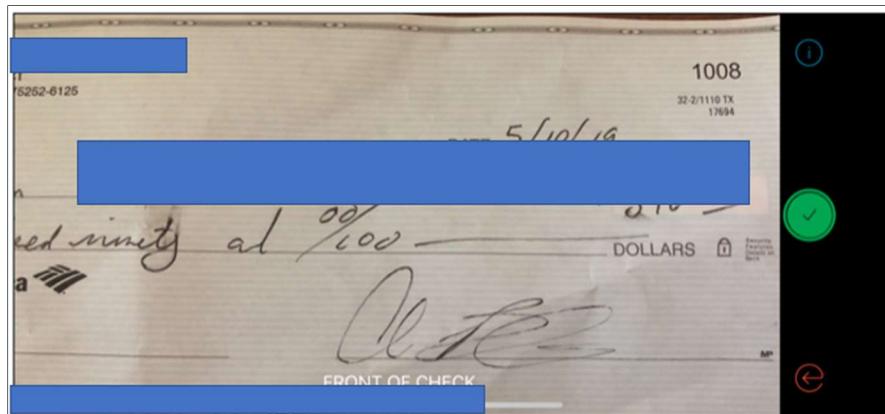
19. Upon being accepted by the user (via the Plains Capital Mobile Banking App), the application pre-processes the front and back images to produce and front and

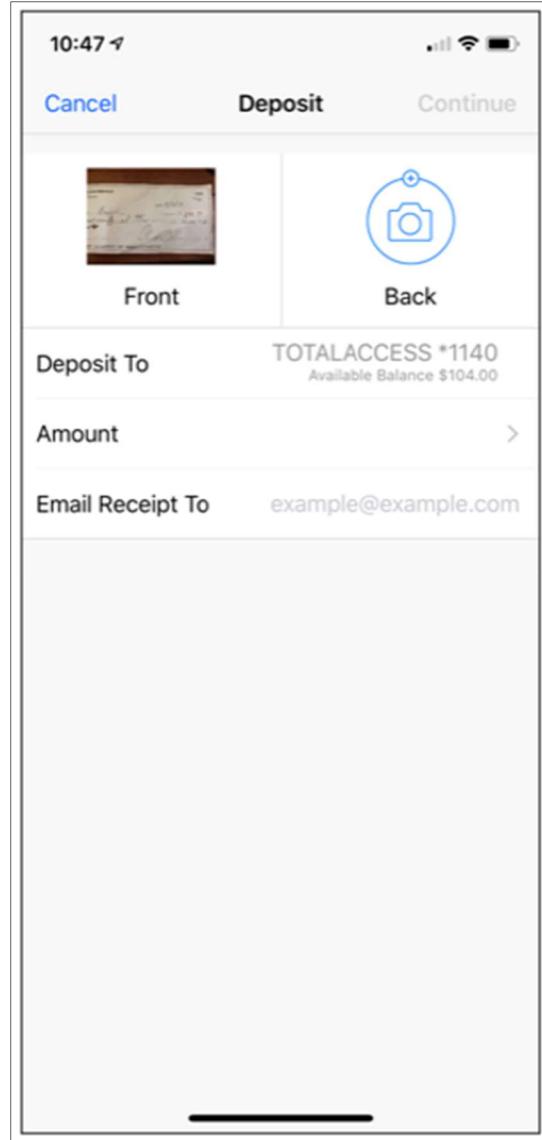
back pre-processed images that is controlled by one or more preprocessing parameters received from a device (e.g., a server used to download the Plains Capital Mobile Banking App) separate from the user device (user's smart phone) in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.

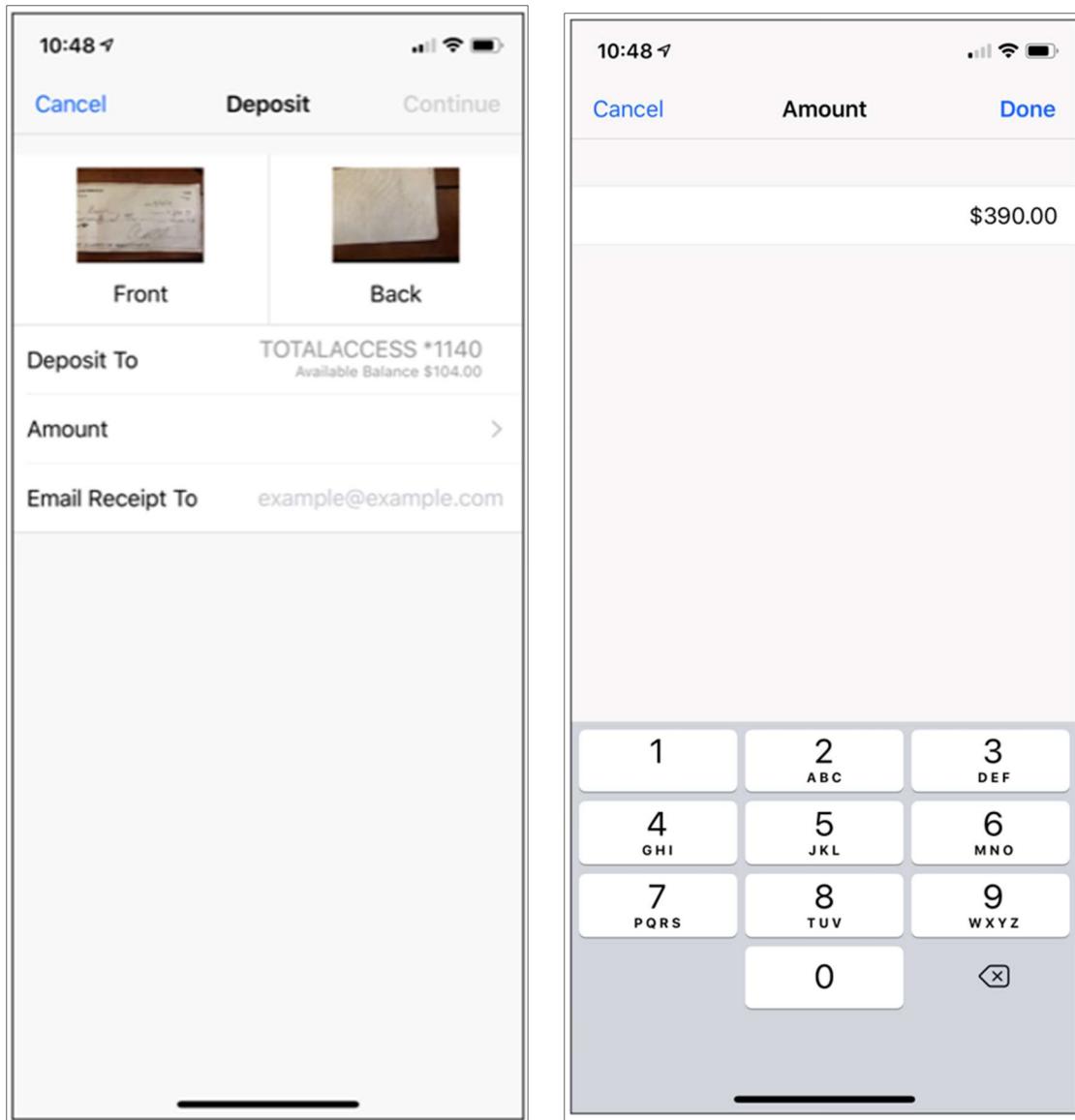
20. The following illustrates an exemplary use of the Plains Capital Mobile Banking App according to the claim limitations as explained above.

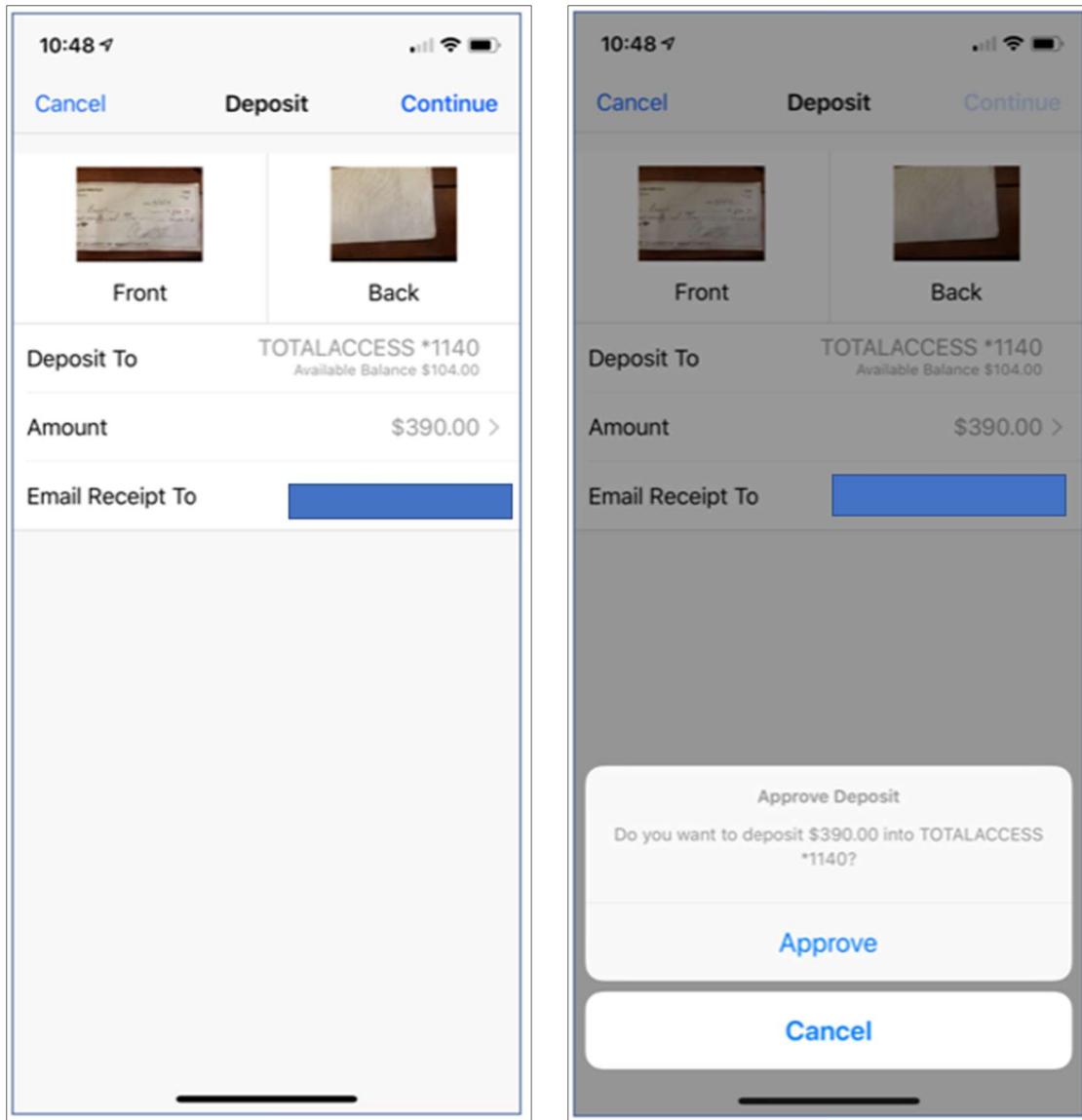


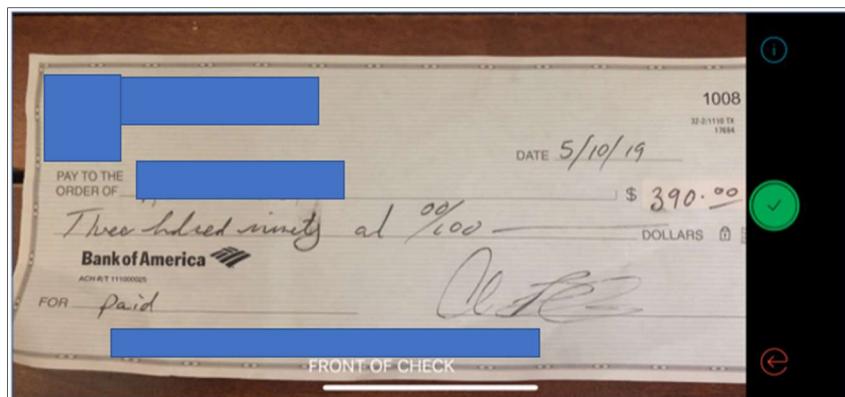
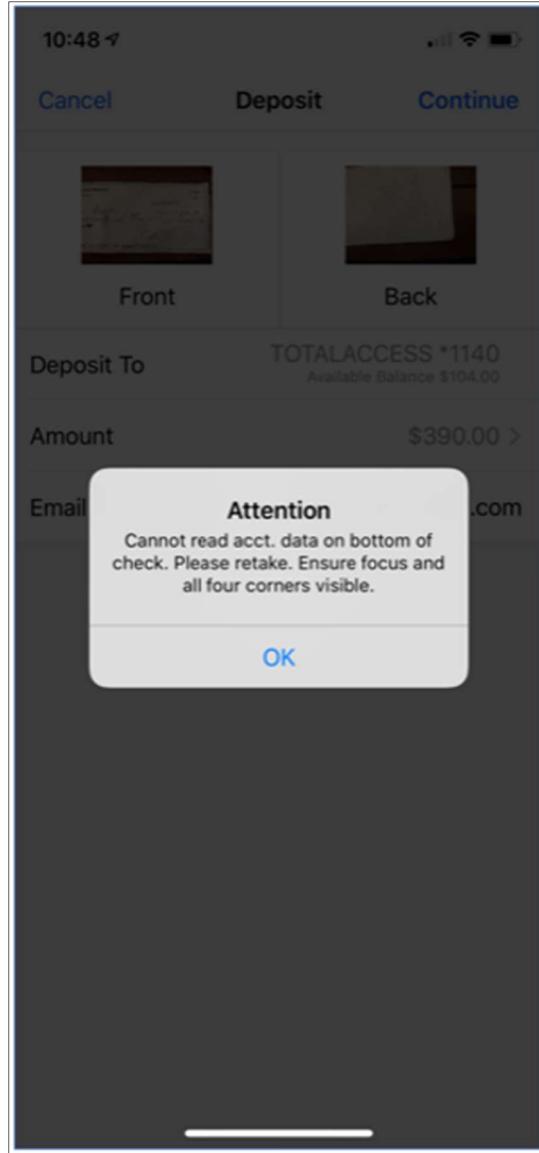
10:46 ⓘ	Notice	Continue
<p>Please endorse your check with "For Mobile Deposit Only, PlainsCapital Bank" and the signature of all payees including the business name(s) if applicable.</p> <p>Check(s) must be made payable to you.</p> <p>Deposits made after 6pm will be processed the next business day.</p> <p>Our business days are Monday through Friday, excluding bank holidays. Funds from deposits may not be available for immediate withdrawal. Please refer to our rules governing funds availability for details.</p>		
10:47 ⓘ	Deposit	Continue
<p>Cancel</p> <p>Front</p> <p>Back</p> <p>Deposit To</p> <p>TOTALACCESS *1140 Available Balance \$104.00</p> <p>Amount</p> <p>Email Receipt To</p> <p>example@example.com</p>		

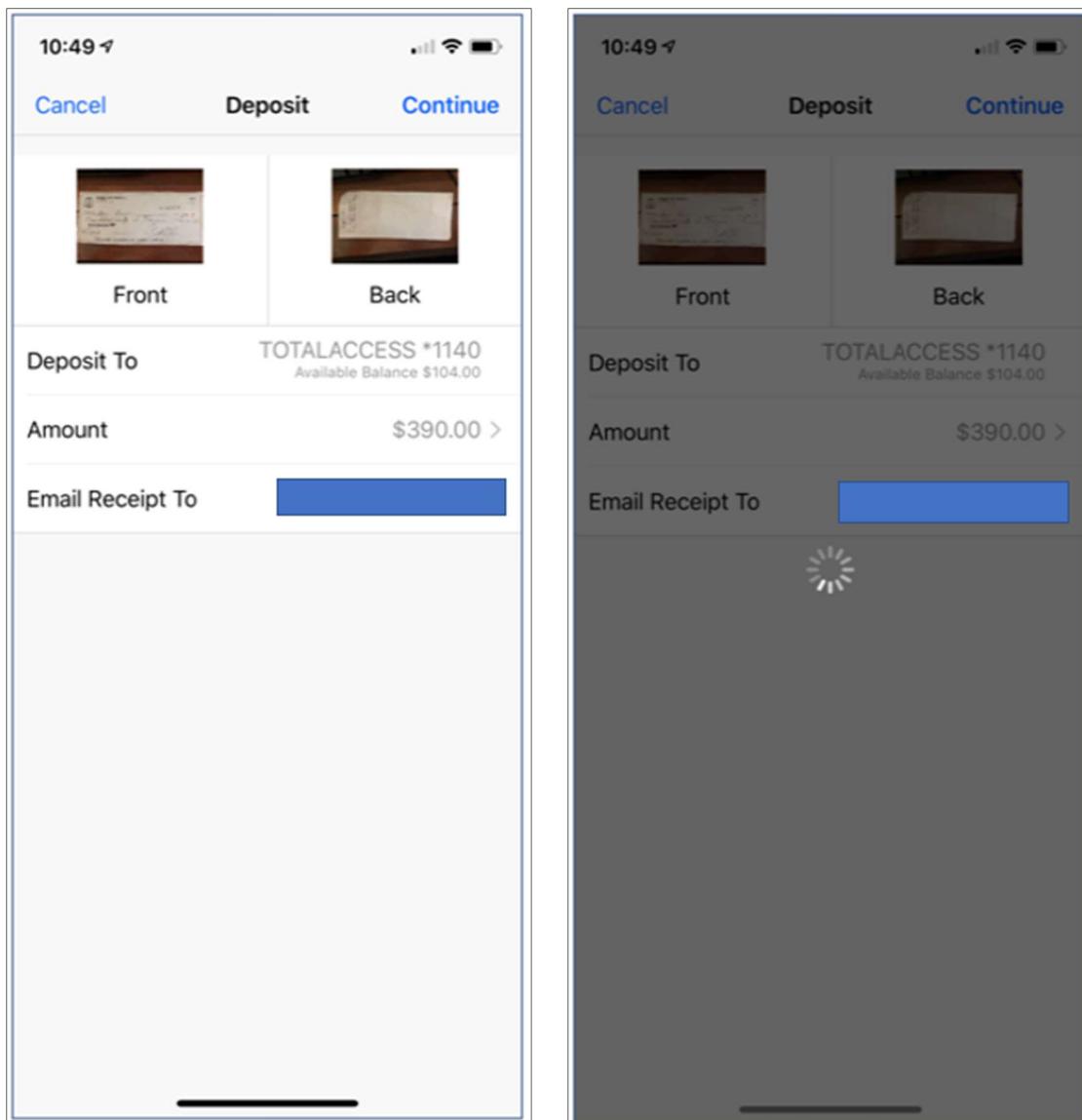
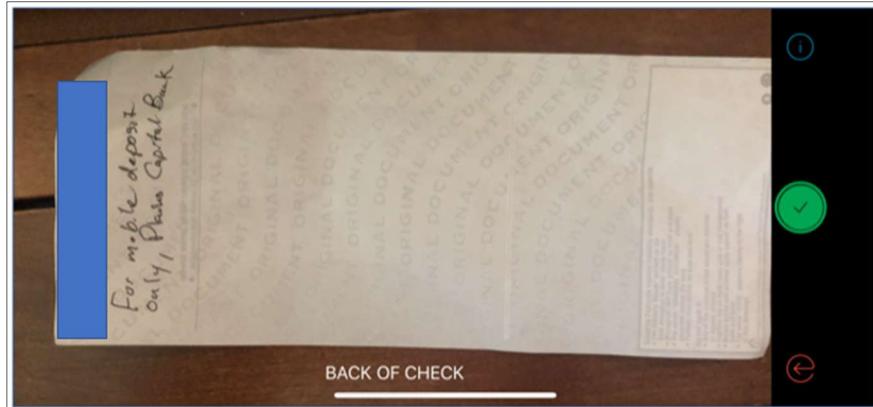


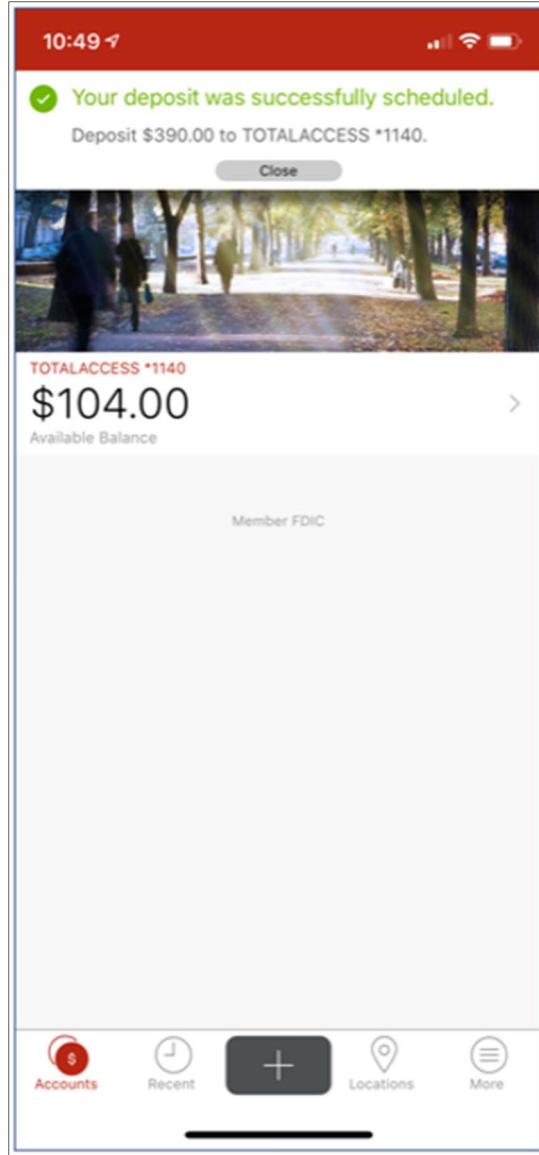












21. Lupercal has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that the Defendant has infringed the '094 Patent;
2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '094 Patent;

3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: September 17, 2019 Respectfully submitted,

/s/ Raymond W. Mort, III
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**ATTORNEYS FOR PLAINTIFF
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